

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

CLINTON W. LYNCH v. RICKY J. BELL, WARDEN

**Direct Appeal from the Circuit Court for Davidson County
No. 05C-2265 Thomas Brothers, Jr., Judge**

No. M2006-00011-CCA-R3-HC - Filed May 23, 2006

The Petitioner, Clinton W. Lynch, appeals from the dismissal of his petition for the writ of habeas corpus. The State has filed a motion requesting that the Court affirm the trial court's denial of relief pursuant to Rule 20, Rules of the Court of Criminal Appeals. We find the State's motion has merit. Accordingly, the motion is granted and the judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed Pursuant to Rule 20, Rules of the
Court of Criminal Appeals**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES, and JERRY L. SMITH, JJ., joined.

Clinton W. Lynch, pro se, Nashville, Tennessee.

Paul G. Summers, Attorney General and Reporter; Brent C. Cherry, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The Petitioner pled guilty to second degree murder on July 31, 1986. Under the Sentencing Act of 1982, the trial court sentenced the Petitioner to forty years in prison, as a Range II persistent offender sentenced for an aggravated offense. On July 29, 2005, the Petitioner filed a pro se petition for writ of habeas corpus relief in the Davidson County Circuit Court. He claims that trial court judges in Tennessee have adopted an unconstitutional procedure for the disposition of habeas corpus cases by restricting habeas corpus review to jurisdictional issues and the improper expiration of sentences. He further argues that he received ineffective assistance of counsel, which entitles him to relief under the writ of habeas corpus. The Petitioner also contends that, according to the Opinion of the Tennessee Attorney General No. 04-131, the portions of the 1989 Sentencing Act that allowed for the enhancement of the Defendant's sentence are constitutionally invalid. He contends that the trial court exceeded the scope of its authority by imposing a sentence above the statutory minimum

without a jury's determination of the facts used to enhance his sentence and that, therefore, his convictions and sentences are void. The Defendant also argues that, pursuant to his plea agreement, the trial court improperly sentenced him as a Range II offender to forty years in prison rather than to the presumptive fifteen year sentence of a Range I offender. On December 15, 2005, the trial court dismissed the petition, finding that the Davidson County Circuit Court had jurisdiction to sentence the Petitioner and that the Petitioner's sentence was not void. The trial court also noted that in State v. Gomez, 163 S.W.3d 632, 649 (Tenn. 2005), the Tennessee Supreme Court held that Tennessee's sentencing scheme is discretionary and non-mandatory, and, as such, it does not violate the Sixth Amendment right to a trial by jury.

The grounds upon which a writ of habeas corpus may be issued are very narrow. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). A writ of habeas corpus is available only when it appears from the face of the judgment or record that either the convicting court was without jurisdiction to convict or sentence the petitioner, or the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may only be sought when the judgment is void, not merely voidable. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). The petitioner has the burden of establishing either a void judgment or an illegal confinement by a preponderance of the evidence. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). A trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. See Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

The Petitioner has failed to set forth any allegations that would indicate that the trial court lacked jurisdiction to convict or sentence him or that he is unlawfully "restrained" for a sentence that has expired. The Petitioner's claim that trial court judges in Tennessee have adopted an unconstitutional procedure for the disposition of habeas corpus cases is without merit. Danny Ray Meeks v. State, No. M2005-00624-CCA-R3-HC, 2005 WL 3262934, *3-4 (Tenn. Crim. App. 2005) *no Tenn. R. App. P. 11 application filed* (holding that the petitioner's condemnation of the habeas corpus system in this state is baseless and beyond the scope of habeas corpus relief). As this court has recognized, Petitioner's claim that he received ineffective assistance of counsel renders a judgement void, not voidable. Adrian Wilkerson v. State, No. M2003-01385-CCA-R3-HC, 2004 WL 2599458, *1 (Tenn. Crim. App., at Nashville, Nov. 12 2004) *perm. app. denied* (Tenn. Feb. 28, 2005).

The Tennessee Supreme Court has concluded that Tennessee's sentencing scheme is discretionary and non-mandatory, and, as such, it does not violate the Sixth amendment right to a trial by jury. Gomez, 163 S.W.3d at 649. The holding in Gomez takes precedence over the opinion of the Attorney General cited in the Defendant's brief. See State v. Blanchard, 100 S.W.3d 226, 230 (Tenn. Crim. App. 2002). Even if there was a violation of the Defendant's constitutional right at the time of conviction and sentencing, such violation would render the judgment voidable, and not void, unless the face of the record establishes that the trial court did not have jurisdiction to convict or sentence the Petitioner. See Earl David Crawford v. State, No. M2004-02440-CCA-R3-HC, 2005 WL 354106, at * 1 (Tenn. Crim. App., at Nashville, Feb. 15, 2005) *perm. app. denied* (Tenn. June 27, 2005).

Issues of offender range and release eligibility are non-jurisdictional and, therefore, subject to plea bargaining. McConnell v. State, 12 S.W.3d 795, 798 (Tenn. 2000). “A knowing and voluntary guilty plea waives any irregularity as to offender classification or release eligibility.” Hicks v. State, 945 S.W.2d 706, 709 (Tenn. 1997). The Petitioner’s forty year sentence falls within the broad scope of sentencing for Class A offenders under the Criminal Sentencing Reform Act of 1982. See Tenn. Code Ann. § 40-35-112(a) (1982). Because the Defendant’s sentence does not exceed the relevant range classification for his plea bargain, his judgement is not void, and is therefore not subject to a collateral attack by a petition for a writ of habeas corpus. Id.

The Petitioner has failed to establish by a preponderance of the evidence that his convictions are void or his term of imprisonment has expired. Accordingly, the State’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE